

GUARDIANSHIP AND CONSERVATORSHIP TRAINING MANUAL



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IMPORTANT NOTICE

TRAINING REQUIREMENT

Effective September 1, 2012

The Arizona Supreme Court requires that any person who is not a state-licensed fiduciary (or a financial institution) must complete a training program approved by the Supreme Court **before** Letters of Appointment to serve as a guardian, conservator, or personal representative can be issued by the Clerk of the Court.

TRAINING SHOULD BE COMPLETED BEFORE THE COURT HEARING.

The fiduciary may for good reason request additional time to complete the training.

You may access and complete the training FREE online at:

<http://www.azcourts.gov/probate/Training.aspx>

Go to the section for “**Non-licensed Fiduciaries**” and click on the link to access a narrated slide-show presentation of the materials applicable to your situation.

AFTER reviewing the materials, you will need to inform the Court that you have completed the training by filing either the Certificate available at the end of the online training, or the Declaration of Completion form available at the end of this training manual, or from either the Probate Filing Counter or the Law Library Resource Center. If you have questions about the training, contact the Probate Clerk at 602-506-3668.

Guardianship Training Manual

After viewing the contents of this manual you will be able to:

- Summarize the major responsibilities of being a Guardian
- Compare and Contrast the roles of guardian and parent
- Explain the difference between best interest and substituted judgment
- Discuss the difficulties involving making decisions for the Ward

Responsibilities of a Guardian

As the guardian, it is your job to ensure that the ward maintains as much independence and autonomy as possible. It is easy to fall into the role of protector, but try to keep in mind that your role is similar to that of a parent to a child. A parent wants to assist a child in navigating the world around them, ensuring they handle the tasks they are capable of handling on their own so they can continue to grow and learn. As the guardian of a disabled or elderly adult, you want to do the same thing. For example, if the ward is capable of maintaining their home without the assistance of a housekeeper or in-home care provider, allow them to do that. Try to allow them as much input into your decisions as possible.

Best Interest/Substituted Judgment

Your role as the guardian is to listen to the ward and ensure that their preferences are being met as long as it does not cause harm. You are in a position to make decisions for the ward in one of two ways; using either substituted judgment or the best interest standard.

➤ Substituted Judgment

When making decisions using substituted judgment you are doing exactly as it sounds; making the decision that the ward would make if they had the mental capacity to do so. You have an obligation to discuss the decision you are going to make with the ward and listen to their preferences in that situation. For example, if the doctor is recommending that the ward have surgery to put in a pacemaker you should discuss this with the ward. Try to put it in terms that they have the ability to understand. Discuss the benefits and the consequences of the decision you are about to make. Listen to their preferences and their reason for making the decision. When using substituted judgment it is also helpful to talk to other family members or friends about conversations they have had with the ward. Has the ward ever talked about their preference for medical treatment? Do they want all measures taken to prolong their life or do they want only pain management? Do they wish to be buried or cremated? Your job is to determine what their preferences were when they were still capable of making those decisions.

➤ Best Interest Decisions

Making decisions using substituted judgment may be easier for a guardian dealing with an elderly disabled ward as opposed to an adult who has been disabled since birth. When dealing with an elderly ward, at one time they were most likely competent and capable of understanding cause and effect relationships. As such, they may have discussed their preferences before becoming disabled; thereby giving you a better understanding of what their wants would be now.

With a ward who has been disabled since birth, it may be more difficult to know their wants as these may never have been clearly expressed. In this situation, or in situations where the ward's preferences may cause serious harm or injury, you would be making your decision based on what you believe to be in the ward's best interest.

Difficult Decisions

It is never easy to make a decision for another adult that goes against their wishes, but you must keep in mind that your friend or family member no longer has the ability to truly understand the consequences of their decision. This is why the court appointed you as guardian – to make the tough decisions. Ultimately the decision is yours, but if you are making a decision that is in contrast to the stated or demonstrated preferences of the ward, you should be prepared to defend that decision.

Coordinating Services

As the guardian, it is your responsibility to ensure that the ward is receiving appropriate medical care, proper education and their overall health and welfare is protected. As a guardian you will be responsible for coordinating medical appointments and being aware of the medical needs of the ward. Do they need hearing aids? What about dentures? Are they diabetic? If so, quarterly appointments with a podiatrist may be useful.

Maybe the ward is a 19-year-old disabled adult. Can they still attend school? What about attending life skills training such as cooking or balancing a checkbook? If the ward has the ability to benefit from this type of training then it is your responsibility to coordinate these services for them.

Ensuring Medical Needs are Being Met

➤ What is informed consent?

The National Guardianship Association (NGA) does an excellent job of discussing the issue of informed consent in their “Standards of Practice.” NGA Standard 6 defines informed consent as “a person's agreement to a particular course of action based on a full disclosure of facts needed to make decisions intelligently.”

In order for it to be considered informed consent, you must have received adequate information about the issue you are being asked to consider and you must enter into the decision voluntarily and without feeling coerced.

➤ Medical Considerations

The NGA provides an online outline that may be very useful when trying to make medical decisions on behalf of the ward. This outline can be found at

http://www.guardianship.org/documents/Standards_of_Practice.pdf

The pages that follow cover the NGA's Standards of Practice 6.

➤ **Informed Consent**

As a guardian you should have a clear understanding of the issue for which informed consent is being sought. If needed, ask as many questions as it takes to feel comfortable that you understand what is being proposed for the ward. Again, keep in mind the adult/child relationship. What types of questions would an adult ask if someone was suggesting this course of treatment for a child?

➤ **Determine Conditions**

Determine the conditions that necessitate treatment or action. In other words, what is the underlying problem that is causing the doctor to suggest this form of treatment? For example, what if the ward has started exhibiting behavioral outbursts and aggressiveness towards caregivers and the doctor wants to prescribe an anti-psychotic medication that has potential for significant side effects? You might first want to consider if these outbursts are because the ward is in pain and instead of the prescription medication, a simple regimen of over the counter pain medication would be the better solution.

➤ **Ward's Preference**

Advise the ward of the decision that is required and determine, to the extent possible, their current preferences. Determine whether the ward has previously stated preferences in regard to a decision of this nature. This relates back to the substituted judgment vs. best interest standard.

➤ **Alternatives**

Determine the expected outcome of each alternative. Using the example of the prescription medication versus simple medication, is it better to consent to the prescription or to request over the counter pain medication first to rule out the need for pain management?

In addition to the expected outcomes, you should also consider the benefits and risks of each alternative. Finally, you should ask, does this decision need to be made now rather than later?

➤ **Later vs. Sooner**

In relation to making a decision later rather than sooner, you may want to consider a decision to take no action at all. Keep in mind, sometimes this is the best decision.

It may be that the ward is elderly and was presented with an option to have a pacemaker in the past. At the time, the ward was competent and determined that she did not believe the risks of the procedure were worth the benefit. In this situation you would want to consider her reasoning at the time she made this decision and make your decision in the same manner.

➤ **Least Restrictive Decision**

When faced with a decision you may want to determine what the least restrictive alternative is for the situation. As the guardian, your role is to ensure that the ward receives the least restrictive form of intervention to ensure the ward maintains as much independence and autonomy as possible. In the behavioral example given earlier, over the counter pain medication would be the lesser restrictive alternative. Living at home with caregivers as opposed to placement in an assisted living facility or nursing home is another example of a lesser restrictive alternative.

➤ **Second Opinion**

Obtain a second opinion, if necessary. The same rights you have over your own person, you have over the ward. If you feel you need a second medical opinion before making a decision for treatment, by all means, seek a second medical opinion.

➤ **Seek Resources in Family and Friends**

It may be helpful to obtain information or input from family, friends or professional fiduciaries. Again, this goes back to making a decision using informed consent vs. substituted judgment. It is always beneficial to seek out assistance from the resources available in your community. Many professional guardians are willing to consult with you to assist you with a particular problem or issue. Many times they have dealt with a similar situation and can point you in the right direction. All hospitals will have a bioethics team available to consult with you about a particular medical procedure. Be familiar with the resources available within your community and use them.

Written Documentation

Obtain written documentation of all reports relevant to each decision. Always keep in mind that your decision is open to scrutiny by others; other family members, court-appointed counsel, or the courts. You want to ensure that you can always support and/or justify a decision you have made on behalf of the ward.

Ensuring Benefits are Received

You need to ensure that you have applied for and are receiving all of the benefits that the ward may be entitled to receive. This may include applying to Medicare, the Arizona Health Care Cost Containment System, the Arizona Long Term Care System, the Veteran's Administration for benefits, the Department of Developmental Disabilities, any form of supplemental health insurance that may be available to the ward, and Medicare Part D to help with prescription drug coverage.

Ward's Rights

The rights that the ward maintains will be outlined in your order of appointment. In most instances the ward will lose the right to drive, vote, determine where they live, consent to medical treatment or maintain firearms. It should be noted that the right to vote on behalf of the ward does not transfer to the guardian.

Handling Money

The law allows a guardian to handle money on behalf of the ward if there is no conservator appointed. In most instances, if the ward receives more than just Social Security income and has significant assets, such as a home, car or brokerage account, then the court will appoint a conservator. The Order to Guardian indicates that the guardian shall not manage more than \$10,000 on behalf of the ward. This value comes from the statutes related to a guardian of a minor. There is no provision in the law to indicate how much money a guardian can manage on behalf of the adult ward so most courts use the same standard as outlined for minors.

Accepting Gifts from the ward

The disclosure statement you must file as the guardian indicates that you have not accepted a gift from someone, who is not related to you by blood, of more than \$100.00. That being said, it is typically looked at as a conflict of interest for you to accept any gift from the ward without first seeking court approval. Additionally, the statute requires that a conservator receive court approval prior to giving any gifts at all on behalf of a ward or protected person. The general rule is that you should not accept gifts from the ward.

Annual Guardianship Report

➤ Obtain a physician's statement

ARS Section 14-5315(C) requires the annual guardianship report to include "a copy of the ward's physician's or registered nurse practitioner's report to the guardian or, if none exists, a summary of the physician's or the registered nurse practitioner's observations on the ward's physical and mental condition."

➤ Annual Report Due Dates

The annual report is due on the anniversary date that your permanent letters of guardianship were issued. The first report will include the time from the date of your first appoint through the end of the ninth month after the permanent appointment. For example, if you were appointed as the temporary guardian on January 1st and your permanent letters of appointment were issued on February 1st, the time frame for your first annual guardianship report would be from January 1st through November 30th. If you only had permanent letters of appointment issued and they issued on January 30th, the report would be from January 30^h through October 31st. Each report after that will be for an entire year. If the ending date of your first report was October 31st, the time frame for all subsequent reports will be November 1st through October 31st.

➤ Information in the Report

The information contained in the guardianship report includes: the ward's current address; how many times you have seen the ward during the report period; the date you last saw the ward; the name and contact information for physicians and any specialists seen by the ward, including any dates for the most recent visits and the Health Professional's Report; any major changes in the ward's condition since the last report; whether or not you believe the guardianship should continue; an outline of any state or federal benefits received by the ward, and the caseworker assigned to oversee those benefits.

Change of Address Notification

According to the Arizona Rules of Probate Procedure, Rule 10(C)(1)(c), the fiduciary must update the probate information sheet with the new address of the ward within three (3) days of the change of address.

Payment as the Guardian

You are entitled to payment for your time as the guardian. If you intend to seek compensation from the estate of the ward, you are required to file a Notice of Compensation with the court. This will outline what you intend to charge as your hourly rate and why you believe you are entitled to that rate. The court may review your fees on an annual basis. You are also entitled to reimbursement from the ward's estate for any money you pay out of pocket for their benefit. For example, if you pay for a filing fee with the court, you would be entitled to be reimbursed for that expense.

Attorney Fees

➤ Can you hire an attorney?

You may hire an attorney and you are entitled to have the fees for that attorney paid by the ward's estate. Just as you would have to file a Notice of Compensation with the court, any attorney who intends to seek compensation from the ward's estate must also file the notice with the court.

When the Ward Dies

When the ward dies, you must file a Notice of Death with the court within ten (10) days after the date of death. As an operation of law, your authority as the guardian ceases at the time the ward dies. If you are managing any funds on behalf of the ward, such as Social Security benefits, you may be required to return those funds to the Social Security Administration or give them to the individual who will ultimately be responsible for distributing the ward's estate to the ward's beneficiaries.

Thank you for viewing this training manual. The welfare of the ward and/or protected person is of utmost importance to the court. For more information about Probate please visit the Judicial Branch website devoted to Probate at www.azcourts.gov/probate.

Conservatorship Training Manual

After viewing the contents of this manual you will be able to:

- Discuss the role and responsibility of the conservator
- Explain what a surety bond is and why it is required
- List some best practices for managing documents and records
- Discuss the importance of understanding projected sustainability
- Describe the forms required by the court and the general timeline/order in which to submit those forms
- Summarize how substituted judgment is used when making decisions regarding the welfare of the protected person
- Recall the steps needed to take when the protected person dies

Responsibilities of a Conservator

As a conservator, your first priority is to marshal and protect the assets of the conservatorship estate. When the court tells you to marshal an asset, do you know what they mean? The court wants you to take control of the assets, on behalf and for the benefit of, the conservatorship estate. There are a number of different ways that you can do this.

➤ “Certified” Letters

One of the first things you need to do is obtain a current “certified” copy of your letters of appointment. A certified copy is a copy issued by the Clerk of the Court in the county where your letters were issued. The certified copy states that it is a true and complete copy of the original letters on file with the issuing court, and that the conservatorship is currently in effect.

➤ Surety Bonds

When you are appointed conservator, the court will also order that a surety bond be posted to cover all the assets that belong to the protected person. A bond is an insurance policy so that if the conservator misappropriates the money, invests it badly, or makes some other mistake, the ward will not suffer as a result. The price of that insurance policy can be paid from the ward’s money, but the conservator must post the bond.

The amount of the bond will ordinarily be the principal value of the ward’s property plus one year’s anticipated income. If the value of the estate changes, you must request an Order of the Court either reducing or increasing the amount of the bond.

If you misuse the ward’s funds, do not maintain those funds, or if you do not keep accurate records, the court may require that your bonding company reimburse the ward’s account for any losses. The bonding company can then file a lawsuit against the conservator to recover the amount the company was required to pay, including, in some cases, the attorney’s fees incurred by the bonding company in seeking the reimbursement. A conservator can be removed by the court when appropriate. Additionally, a conservator who misappropriates funds or engages in theft or fraud may be criminally prosecuted.

➤ **Record your Letters**

Once you have obtained a surety bond and a certified copy of your conservator letters you will want to record your letters with the county recorder in the county where the protected person resides.

You will also want to record your certified letters in any other county where the protected person may own property. By recording your letters of appointment you are putting the public on notice of your appointment. You are also creating a record that identifies you as the only person entitled to transfer property on behalf of the protected person in the event someone should attempt to sell or make any lien or other encumbrance against the real property.

➤ **Notice of Filing**

Once you have received the recorded copy of your letters of appointment back from the recorder's office (there will be a marking on the document that reflects it has been recorded and where that record can be found for future reference), you will need to file a Notice of Filing with the court to show that you have recorded the letters of appointment.

Marshal an Account

In order to marshal a bank or brokerage account, you will need to notify the financial institution of your appointment. When you first meet with the financial institution be sure to bring the original, stamped letters or the certified copy of your letters of appointment with you. Most banks' legal department will want to see a certified copy of your letters of appointment in order to allow you access to the account. Also, if you have access to the protected person's social security number, date of birth and bank account number(s) be sure to bring those with you as well.

How Should Assets be Titled?

Once you have presented your letters of appointment, the account(s) will be re-titled into the name of the conservatorship. The way the account is titled depends on the organization; some may title the account as "Jane Doe, conservatee, by John Doe, conservator"; others may title it as "Jane Doe" and then the next line will read "John Doe, conservator." The purpose of this is to notify the organization (bank, brokerage firm, Department of Motor Vehicles) that you are the only person who should be dictating how the asset is held, spent, or managed.

Recording Transactions

You should be very careful not to let any other individual have access to any bank accounts you manage. While there is no law that prohibits you from using a debit card or cash to transact business on behalf of the protected person, it is best to avoid using a debit card or cash whenever possible. Debit cards can be easily accessed by another individual and it is difficult to prove that a cash transaction was used for the benefit of the protected person. If it is necessary to use cash for a purchase be sure and keep all receipts to prove the purchase was for the benefit of the protected person.

Re-Title Vehicles

You may also re-title vehicles in the name of the conservatorship. In order to do this, you will need to bring your letters of appointment to the Motor Vehicles Division. The MVD typically requires a certified copy dated within 60 days from the date of the re-title request. Vehicles may be cars, motorcycles, boats, recreational vehicles or motor homes.

Documents to File Within 90 Days

There are certain documents that need to be filed within 90 days of your appointment as conservator. Among these documents is an inventory or appraisal of the protected person's assets.

The value listed on the inventory for a particular asset is the value as of your first date of appointment, whether temporary or permanent. All assets of the protected person's estate should be listed on the inventory and appraisal. This list should include, but is not limited to the assets shown below:

- Bank accounts
- Brokerage accounts
- Annuities
- Life insurance policies (the cash surrender value)
- Real property (homes, vacant land, and burial plots)
- Automobiles
- Jewelry/Artwork/Antiques
- Household items
- Cash/Coins

How to Determine the Value of Assets?

The (cash) value of bank accounts, brokerage accounts, annuities and/or life insurance policies will be the value on the date you were appointed. A reliable way to determine the value of an automobile would be to use the Kelley Blue Book valuation.

➤ Provide a Reasonable Estimate

Determining the value of other assets may be a little more difficult. Appraisals may be obtained for homes, jewelry, artwork or antiques. Appraisals can be very costly so if it is not your intent to liquidate the asset in the very near future, it may be best to provide a reasonable estimate of the assets' value as the value can change significantly in a very short period of time, such as with real estate. If you provide an estimate for the value be sure to make note of this on the inventory.

Assets Detail

➤ How much detail should you include?

You should include as much detail as is necessary to reasonably identify the asset. For example, if the protected person has a checking account at Bank of America, you would document it as "Bank of America" and provide the checking account number.

➤ **Documenting Assets**

When documenting an automobile, you should include the make, model, year and vehicle identification number (VIN). You should include the address and parcel number for real estate.

Documenting household items on an inventory is a little more difficult. Some will include a lump sum value of miscellaneous household property and others will include details such as one sofa, one end table and one coffee table. No matter the amount of detail you choose to include for household items, you should always photograph or video tape the personal property.

Credit Report

As the conservator, you must include a copy of the protected person's credit report from a credit reporting agency when you file your inventory and appraisal. The credit report must be dated within ninety (90) days of filing it with the court. You may obtain a copy of the credit report by writing a letter to the credit reporting agency or you may obtain one free of charge from AnnualCreditReport.com.

Budget

As the conservator, you must include a budget at the time of filing your inventory and appraisal. The first budget will be for the same time frame as your first annual accounting. A new budget must be submitted to the court every year thereafter with the annual accounting.

➤ **Exceeding the Budget**

The budget shall be completed on the form prescribed by the Supreme Court and can be located in the probate section of the Supreme Court's website. You will need to monitor the budget closely to ensure that you are not exceeding any particular expense category by \$2,000 or 10% of the budgeted amount, whichever is less. If you reasonably believe you may exceed the budget, you must notify the court, and all interested parties, of the reason you will exceed the stated budget amount within thirty (30) days.

➤ **Projected Sustainability**

As the conservator, you must disclose to the court whether the estimated expenses of the estate exceed the annual income and if so, whether the other assets available to the protected person are sufficient to sustain the person during the time period the protected person needs care or fiduciary services. In other words, does the protected person have sufficient income and assets to meet their needs for the estimated remainder of their lifetime?

RULE 30.2. SUSTAINABILITY OF CONSERVATORSHIP

A. THE CONSERVATOR SHALL DISCLOSE WHETHER THE ANNUAL EXPENSES OF THE CONSERVATORSHIP EXCEED INCOME AND, IF SO, WHETHER THE ASSETS AVAILABLE TO THE CONSERVATOR LESS LIABILITIES ARE SUFFICIENT TO SUSTAIN THE CONSERVATORSHIP FOR THE DURATION OF TIME THE PROTECTED PERSON NEEDS CARE OR FIDUCIARY SERVICES.

B. THE ESTATE SUSTAINABILITY SHALL BE CALCULATED AS FOLLOWS:

[AVAILABLE ASSETS MINUS LIABILITIES OF THE ESTATE] ***DIVIDED BY***
[ANNUAL EXPENDITURES MINUS ANNUAL INCOME] ***EQUALS*** ESTATE
SUSTAINABILITY

C. IF THE ASSETS ARE NOT SUFFICIENT TO SUSTAIN THE ESTATE, THE CONSERVATOR SHALL ALSO DISCLOSE THE MANAGEMENT PLAN FOR THE NON-SUSTAINABLE CONSERVATORSHIP.

D. THE INFORMATION REQUIRED BY THIS RULE SHALL BE A GOOD FAITH PROJECTION BASED UPON THE INFORMATION THAT IS REASONABLY AVAILABLE TO

In order to determine the potential sustainability of the protected person’s estate you will need to use a calculation outlined in the Arizona Rules of Probate Procedure, Rule 30.2 as follows on the succeeding pages.

$$\frac{\$120,000 + \$20,000 - \$65,000}{\$45,000 - \$20,000} = \text{Estate Sustainability}$$

$$\frac{\$75,000}{\$25,000} = \text{Estate Sustainability of 3 years}$$

Thus, if based on the conservator's knowledge of the protected person's medical condition and age, the conservatorship is not sustainable, the conservator shall explain how the protected person's expenses will be managed after three years.

The following example describes how the required disclosure is calculated: Assume a protected person's estate consists of a residence with a fair market value of \$120,000, \$20,000 in bank accounts and a \$65,000 mortgage. Further, assume that same protected person has annual expenses (including fiduciary and attorney fees) of \$45,000 and an annual income of \$20,000. From this example we can see the conservatorship is sustainable for 3 years.

Recordkeeping

➤ **What types of records should you keep?**

You are required to keep records of all income and expenses you manage as the conservator of the protected person’s estate. You will need to keep copies of all bank statements, brokerage

statements, invoices, receipts, and any other record you need to support your efforts as conservator.

Receipts are vital in that they show what was actually acquired, not just how much was paid. This can be used by the court to establish the fact that the expense benefited the protected person.

Invoices

Here are a few good practice tips for you as a conservator: first, develop and maintain a bookkeeping and receipt storage system for all the protected person's documents. Second, include a copy of any check used to pay an invoice to a copy of that invoice in your records. This will ensure all parties know the expenses you are making are for the benefit of the protected person.

Original Papers

Documents to maintain:

- Life insurance policies
- Insurance cards
 - Health, Car, Home
- Deeds
- Titles
- Birth certificates
- Death certificates

You should maintain the original papers for all important documents, such as life insurance policies, deeds, titles, birth certificates, death certificates and insurance cards (health insurance, car insurance).

Maintain Records

The length of time you maintain records for the protected person depends on a number of factors. At a minimum, it is recommended you keep all records regarding your activities as a conservator for as long as you are acting as conservator. Keep in mind however, that other laws may require you keep records for longer periods of time.

The typical recommendation is to follow the record retention requirements outlined by the Internal Revenue Service. The most recent information from the IRS indicates “**Note:** Keep copies of your filed tax returns. They help in preparing future tax returns and making computations if you file an amended return.”

- 1) If you owe additional tax and situations (2), (3), and (4), below, do not apply to you; keep records for 3 years.
- 2) If you do not report income that you should report, and it is more than 25% of the gross income shown on your return; keep records for 6 years.
- 3) If you file a fraudulent return; keep records indefinitely.
- 4) If you do not file a return; keep records indefinitely.
- 5) If you file a claim for credit or refund* after you file your return; keep records for 3 years from the date you filed your original return or 2 years from the date you paid the tax, whichever is later.

- 6) If you file a claim for a loss from worthless securities or bad debt deduction; keep records for 7 years.
- 7) Keep all employment tax records for at least 4 years after the date that the tax becomes due or is paid, whichever is later.

Pay/Transfer on Death

As the conservator, you have an obligation to maintain the estate plan of the protected person. Assets titled as payable-on-death or transfer-on-death to an individual are considered part of the protected person's estate plan. When you discover assets that are titled in this manner, you need to use those assets only after all other assets have been exhausted.

For example, if you have a checking account, savings account, brokerage account, and an IRA, and that IRA has a payable on death beneficiary, you must use all the other assets to maintain the protected person's welfare first, before you use the assets held in the IRA. The reason for doing this is to protect that asset and have it available for the beneficiary, thereby fulfilling the protected person's final wish.

This also applies to assets that are specifically gifted to a particular person in either the Last Will and Testament or trust of the protected person. You should be familiar with these documents and any designated beneficiaries named within them.

Restricted Assets

➤ What does it mean if the court “restricts” an asset?

When a court restricts an asset it means that you are not allowed to use, sell, or transfer that asset without the court's approval. The court can restrict any asset of the protected person's estate but typically restricts bank accounts, brokerage accounts or real property. When the court restricts an asset, the restriction is outlined on your letters of appointment so that all parties know what you can and cannot do as conservator.

If the court restricts an asset you will not need to bond for it. However, if you request that the restriction be lifted, the court will order that a bond be posted for that now unrestricted asset.

➤ Proof of Restricted Account

When the court restricts a bank or brokerage account, you must file a “Proof of Restricted Account” form with the court. This form outlines where the account is held, the account number and the current balance of the account. The form is signed by an officer or manager of the financial institution and indicates that the financial institution understands that the court has restricted the account and they will not allow anyone to remove funds from the account without an order from the court.

➤ Restricted Real Property

If there is a restriction on the protected person's real property this will be contained in the conservator's letters of appointment. When such an asset restriction exists, a title company should not allow the conservator to execute a sale document without providing an order from the court authorizing the conservator to do so.

Notice to Service Providers

- **Ensures payments to service providers are made on time**
- **Ensures service providers only take direction from you**

When contacting the protected person's service providers to request future statements be sent to your address for payment, it is good practice to provide a copy of your letters of appointment as conservator for their records. This request should be made as soon as practicable after your appointment. This will ensure that you receive the information necessary to pay the financial obligations of the protected person, as well as ensure that the providers only take direction from you regarding the account.

Change of Address

You should also process a “change of address” request with the United States Postal Service to ensure that you receive all correspondence of the protected person. This will ensure that you are aware of all debts owed by the protected person, and that you are aware of all assets of the protected person.

Annual Account Information

The annual account contains a listing of all financial transactions that have taken place in the previous year of your administration as conservator. It contains information about the beginning value of all assets held by the protected person’s estate as of the date of your appointment as well as the ending balance of the assets as of the last date of the account period. The transactions (receipts, disbursements, gains, losses and other adjustments) outline what happened in the middle to cause the beginning and ending balances to change.

➤ Additional Accounts

In addition to the annual account, the conservator is responsible for providing a budget and a sustainability projection account along with the annual account.

➤ When to File the Annual Account

Your account must be filed by the first anniversary date of your permanent appointment. In other words, if you are appointed as the temporary conservator on January 1 and the permanent conservator on February 1, your account must be filed by February 1 the following year, but will include all transactions from January 1 forward.

➤ First Account

The first annual account should include all activity from the date of the first appointment (temporary or permanent if no temporary conservatorship established) through and including the last day of the ninth month following the permanent appointment. Using the example above, if you were appointed as the temporary conservator on January 1 and the permanent conservator on February 1, your account period would be from January 1 through November 30 (the last day of the ninth month following your permanent appointment). If you were appointed as the permanent conservator on January 1, your first account would go from January 1 through October 31.

➤ **Subsequent Accounting**

Each subsequent accounting will be from one day after the ending day through the same ending day as the previous year's accounting. For example, if the first accounting period ends December 31, 2012 then the second accounting period would cover from January 1, 2013 to December 31, 2013.

At the time of death of the protected person, the conservator is required to file the final account within 90 days from the date of death. The time frame for that account will be from the ending date of the previous account through the date of death.

Best Interest vs. Substituted Judgment

Your role as the conservator is to listen to the protected person and ensure that their preferences are being met as long as it does not cause harm. You are in a position to make decisions for the protected person in one of two ways; using either substituted judgment or the best interest standard.

➤ **Substituted Judgment**

You have an obligation to discuss the decision you are going to make with the protected person.

When making decisions using substituted judgment you are doing exactly as it sounds; making the decision that the protected person would make if they had the capacity to do so. To the extent the protected person can understand the issue at hand, you have an obligation to discuss the decision you are going to make with the protected person and listen to their preferences in that situation.

For example, if you believe it would be appropriate to liquidate an asset belonging to the protected person, you should discuss this with them. Try to put it in terms that they have the ability to understand. Discuss the benefits and the consequences of the decision you are about to make. Listen to their preferences and the reason for making the decision.

➤ **Stated Preferences**

When using substituted judgment it is also helpful to talk to other family members or friends about conversations they have had with the protected person. Has the protected person ever talked about their preference for liquidation of their assets? Did they want that particular asset to be set aside as a gift for a friend or family member? Your job is to determine what their preferences were when they were still capable of making those decisions.

Lifetime Disabled vs. Adult Disabled

Making decisions using substituted judgment may be easier for a conservator dealing with an elderly disabled individual as opposed to an adult who has been disabled since birth. When dealing with an elderly individual, they were likely competent and had the ability to understand cause and effect relationships. As such, they have likely discussed their preferences before and you may have a better understanding of what they want.

With an individual who has been disabled since birth, this may be more difficult. In those situations (or in situations where the protected person's preferences may cause serious harm or injury) you would be making your decision based on what you believe to be in the protected person's best interest.

Tough Decisions

It is never easy to make a decision for another adult that goes against their wishes but you must keep in mind that your friend or family member no longer has the ability to truly understand the consequences of their decision. This is why the court appointed you as the conservator – to make the tough decisions.

Ultimately, the decision is yours but if you are making a decision that is in contrast to the stated or demonstrated preferences of the protected person, you should be prepared to defend that decision.

Accepting Gifts from the protected person

The disclosure statement you must file as the conservator indicates that you have not accepted a gift from someone, who is not related to you by blood, of more than \$100.00. That being said, it is typically looked at as a conflict of interest for you to accept any gift from the protected person without first seeking court approval. The general rule is that you cannot and should not accept gifts from the protected person.

➤ Giving Gifts

- The protected person's estate plan
- Whether there is a pattern of prior gifting
- The potential tax savings if the gifts are authorized
- The size of the estate
- The protected person's income and expenses
- The physical and mental condition and life expectancy of the protected person (the court wants to ensure that the gift would not diminish the protected person's ability to meet their needs during the course of their lifetime)
- The likelihood that the protected person's disability may cease or improve
- The likelihood that the protected person would make this gift if they were able to consent (this is an example of how substituted judgment comes into play in your decision making process)
- The ability of the protected person to consent to the gifts

If you are seeking authority to provide a gift to someone from the protected person you should be prepared to supply the court with all the information shown on this page. Keep in mind, if you, as the conservator, authorize and pay a gift without court approval, you could be held liable and be required to reimburse the estate for the value of the gift.

Payment for Conservatorship

You are entitled to payment for your time as the conservator. If you intend to seek compensation from the estate of the protected person you are required to file a Notice of Compensation with the court. This will outline what you intend to charge as your hourly rate and why you believe

you are entitled to that rate. The court may review your fees on an annual basis. You are also entitled to reimbursement from the protected person's estate for any money you pay out of pocket for their benefit. For example, if you pay for a filing fee with the court, you would be entitled to be reimbursed for that expense.

Attorney's Fees

➤ Can You Hire an Attorney?

Yes, you may hire an attorney and you are entitled to have the fees for that attorney paid for by the protected person's estate as long as the court determines that the fees are reasonable and necessary. Just as you would have to file a Notice of Compensation with the court, any attorney who intends to seek compensation from the ward's estate must also file the notice with the court.

When the Protected Person Dies

When the protected person dies, you must file a Notice of Death with the court within ten (10) days after the date of death. You must then file your final accounting with the court within 90 days from the date that the protected person died. The final account will go through the date of death of the protected person.

You may then be required to file a second, supplemental final accounting which shows the court what you did with the assets of the protected person's estate from the date of death until you turn the assets over to either the beneficiaries (on payable on death or transfer on death accounts) or to the individual responsible for managing the estate of the deceased protected person.

Unlike a guardian, your authority as conservator does not end on the day that the protected person dies. You still have the authority and responsibility to manage and protect the assets of the protected person. You want to ensure that you are only paying for necessary expenses of the protected person's estate after they pass away. For example, you may pay for burial or funeral services; you may pay to protect the assets of the protected person (such as insurance on assets or utilities on a home) or the final medical expenses of the protected person.

You want to be very careful in what you pay for and when as there are specific provisions under the law as to what creditors get paid first and what happens if there are not enough assets in the estate to pay all creditors. If you are in doubt, seek legal advice.

Thank you for viewing this training video. The welfare of the ward and/or protected person is of utmost importance to the court. For more information about Probate please visit the judicial branch website devoted to probate at www.azcourts.gov/probate

Your Name: _____
Your Address: _____
Your City, Zip Code: _____
Your Telephone No. _____
Represents Self OR Attorney for: _____
State Bar Number (if applicable): _____

FOR CLERK'S USE ONLY

SUPERIOR COURT OF ARIZONA IN MARICOPA COUNTY

In the Matter of the Estate of _____

Case Number PB: _____

DECLARATION OF COMPLETION OF TRAINING for NON-LICENSED FIDUCIARIES

A Deceased or Protected Person

Rule 27.1 of the Arizona Rules of Probate Procedure requires that a person to be appointed guardian, conservator, or personal representative of an estate, who is neither a state-licensed fiduciary nor a corporation, complete a training program approved by the Supreme Court of this state before permanent **Letters of Appointment** are issued.

UNDER PENALTY OF PERJURY

I state to the Court that in accord with Rule 27.1 of the Arizona Rules of Probate Procedure, I have completed the required training for non-licensed, non-corporate fiduciaries, as indicated below: (Check all that apply and provide applicable information.)

- | | |
|--|-----------------------|
| <input type="checkbox"/> Unlicensed Fiduciary | Date completed: _____ |
| <input type="checkbox"/> Conservatorship | Date completed: _____ |
| <input type="checkbox"/> Personal Representative | Date completed: _____ |
| <input type="checkbox"/> Guardianship | Date completed: _____ |

Date: _____

Signature _____

Printed Name _____

INSTRUCTIONS: Fill out this Declaration completely and provide accurate information. Make at least one copy. You will need to file the original with the Clerk of Court and provide a copy to the Probate Registrar before receiving any *permanent* letters of appointment.